

TAXATION AND REVENUE: Liability for payment of Missouri intangible personal property tax on interest-bearing accounts receivable of foreign corporations doing business in this state.

July 22, 1946



Honorable M. E. Morris
Director of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter of recent date, wherein you request an official opinion of this department based upon a letter received by you from the Associated Industries of Missouri. Their letter to you reads as follows:

"We have received several inquiries concerning the application of the tax on intangible personal property regarding property of persons not residing in the State of Missouri, and for the purpose of furnishing this information to our membership, many of whom handle business of non-residents, while others are themselves non-residents, we respectfully request your opinion assuming the facts as set forth below.

"Are accounts receivable, which bear interest, taxable in view of the third sentence in Section 1 (D) of Truly Agreed to and Finally Passed House Committee Substitute for House Bill 868, under the following facts:

"An out-of-state concern employs salesmen in Missouri, makes sales in Missouri, maintains a warehouse in Missouri from which deliveries are made, but does not maintain offices in the state. The principal offices are located outside of Missouri where the books and records are kept, including the accounts receivable growing out of Missouri sales. If it is your opinion that the income on such accounts receivable is not tax-

able, would it be otherwise if no offices or warehouses were maintained in the State of Missouri? Would the answer still be different if the accounts receivable themselves were kept within the state?

"We would appreciate receiving your reply at as early a date as practicable, inasmuch as many of our members need this information in connection with preparing their returns in the very near future."

That accounts receivable are included within the scope of intangible personal property subject to Missouri property tax appears in subsection (B) of Section 1 of House Bill No. 868 of the 63rd General Assembly, wherein we find the following statement:

"(B) Intangible personal property means * * * notes, debentures, annuities, accounts receivable; * * *"

The taxable situs of intangible personal property is fixed by the further provisions of subsection (D) of Section 1 of the same Act, which reads, in part, as follows:

"(D) The taxable situs of intangible personal property for the purpose of this act shall, for residents of Missouri, be the residence of the owner thereof. * * * All intangible property of persons residing in other states used in or arising out of business transacted in this state by, for or on behalf of such non-resident persons shall be taxed on the annual yield thereof, and the taxable situs shall be the location of the business. * * *"

It, therefore, becomes apparent that the answer to the inquiry made you will depend upon whether or not the taxable situs of the interest-bearing accounts receivable is within the taxing jurisdiction of the State of Missouri. The facts as submitted do not disclose whether or not such foreign "concern" is a foreign corporation licensed to do business in Missouri, or whether it is simply carrying on such business within this state. However, in view of certain statements made therein, we believe that your question is intended to relate to a corporation lawfully doing business in Missouri under a license to do so issued by the Corporation Department of the Office of the Secretary of State.

On the assumption that this is a correct statement of the situation, your attention is directed to a portion of Section 97 of the General Corporation Code of Missouri, found in Laws of 1943, pages 410 to 491, inclusive, which reads, in part, as follows:

" * * * A foreign corporation which shall have received a certificate of authority under this Act shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business; and, except as in this Act otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a corporation of like character organized under or subject to this Act. * * * " (Emphasis ours.)

That the intangible personal property of all domestic corporations is subject to the taxing provisions of House Bill No. 868 of the 63rd General Assembly appears from subsection (A) of Section 1 thereof, which reads, in part, as follows:

"(A) The term person includes any * * * corporation * * *."

While it is unquestionably true that the "residence" of a corporation remains the state under whose laws it has been created, yet such corporation may, by reason of its presence for the purpose of doing business in another state, acquire a constructive residence for certain purposes, particularly for the purpose of subjecting its property in such other state to the property tax laws thereof. We quote from *City of St. Louis v. Consolidated Coal Co.*, 113 Mo. 83, 1. c. 87, as follows:

" * * * While a corporation, in the jurisprudence of the United States, is regarded as a citizen of the state which created it and can exercise its franchise in another jurisdiction only so far as may be permitted, yet 'by the consent, express or implied, of

the local government, it may transact there any business not ultra vires, "and like a natural person may have a special or constructive residence, so as to be charged with taxes and duties or be subjected to a special jurisdiction." St. Louis v. Ferry Co., 11 Wall. 424.

"If the physical situs of the boats was in St. Louis, they were taxable property there, though the legal residence of their owner was in Illinois. * * *"

Also, from City of St. Louis v. Wiggins Ferry Co., 78 U.S. 423, 11 Wall 42, 20 L. Ed. 192, mentioned in the above citation:

"In the jurisprudence of the United States a corporation is regarded as in effect a citizen of the state which created it. It has no faculty to emigrate. It can exercise its franchises extra-territorially only so far as may be permitted by the policy or comity of other sovereignties. By the consent, express or implied, of the local government, it may transact there any business not ultra vires, and, 'like a natural person, may have a special or constructive residence, so as to be charged with taxes and duties or be subjected to a special jurisdiction.' Glaize v. S. C. R. Co. 1 Strob. 72; Cromwell v. Charleston Ins. Co. 2 Rich. 512. It is for the local sovereign to prescribe the terms and conditions upon which its presence by its agents and the conducting of its affairs shall be permitted. Bank v. Earle, 13 Pet. 588; Lafayette Ins. Co. v. French, 18 How. 405, 15 L. ed. 451.

"It has been said that the power of taxation for the purposes of the commonwealth is a part of all governmental sovereignty and is inseparable from it. It is for the legislature to decide what persons and property shall be reached by the exercise of this function, and in what proportions and by what processes and instrumentalities taxes shall be assessed and collected. *The authority extends over all persons and property within the sphere of its

territorial jurisdiction.* When called into activity there can be no limit to the degree of its exercise except what is found in the wisdom of the law-making power and the operation of those conservative principles which lie at the foundation of all free government. McCulloch v. Md. 4 Wheat. 428; Prov. Bank v. Billings, 4 Pet. 563.

"Where there is jurisdiction neither as to person nor property, the imposition of a tax would be ultravires and void. If the legislature of a state should enact that the citizens or property of another state or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action.

"In the eye of the law personal property, for most purposes, has no locality. Mobilia sequuntur personam; immobilia situm. Mobilia nonhabent sequelam. In a qualified sense it accompanies the owner wherever he goes, and he may deal with it and dispose of it according to the law of his domicile. If he die intestate, that law, wheresoever the property may be situate, governs its disposal, and fixes the rights and shares of the several distributees. Story, Confl. L. sec. 379; Broom, Max. 501, 502; Re Ewin, 1 Cromp. & J. 156. But this doctrine is not allowed to stand in the way of the taxing power in the locality where the property has its actual situs, and the requisite legislative jurisdiction exists. *Such property is, undoubtedly, liable to taxation there in all respects as if the proprietor were a resident of the same locality.* Int. Life Assur. Co. v. Comrs. of Taxes, 28 Barb. 318; People v. Comrs. 23 N. Y. 228; Story, Confl. L. 550. The personal property of a resident, at the place of his residence, is liable to taxation, although he has no intention to become domiciled there. Findley v. Phila. 32 Pa. 381. * * *" (Emphasis between ** ours.)

In view of the principles enunciated in the fourth paragraph of the last quoted citation, it becomes apparent that it is immaterial as to where the physical evidence of such intangible personal property is located. If the foreign corporation has in fact acquired such a residence for tax purposes in Missouri as to be subjected to the taxing jurisdiction of this state, then the situs of the accounts receivable arising from its business transactions in this state will remain here without regard to their physical location.

CONCLUSION

In the premises, we are of the opinion that interest upon accounts receivable which result from business transacted in the State of Missouri by a foreign corporation has a tax situs in Missouri, and therefore is subject to taxation under the Missouri intangible personal property tax laws.

Respectfully submitted,

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APPROVED:

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